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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	CC Docket No. 95-185
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), by its attorneys, files this Reply to the Oppositions filed by SBC, US WEST, Bell Atlantic, and GTE, to the Petition for Reconsideration filed by McLeodUSA in this docket, and renews its request that the Commission reconsider and clarify its decision in the above-captioned proceeding[1] with respect to nonrecurring charges potentially applicable to the purchase of unbundled loops.

INTRODUCTION

In its Petition for Reconsideration, McLeodUSA explained how some RBOCs are attempting to limit the ability of CLECs to provide service using unbundled loops by levying thousands of dollars in "special construction charges" before providing an unbundled loop for a customer, even though that customer may currently be receiving the same services from the RBOC that the CLEC wishes to provide. The "loophole" used by

[1] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999) ("*UNE Remand Order*").

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RBOCs to achieve this arises when the customer in question is served by Integrated Digital Loop Carrier (IDLC). Not surprisingly, several RBOCs and GTE have defended this practice, which is directly in conflict with the principles adopted in *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, (1996) ("*Local Competition Order*"). In this Reply, McLeodUSA will show that the arguments presented in opposition to its Petition are without merit. As a result, the Commission should clarify its ruling to specifically state that additional charges may not be imposed on purchasers of unbundled network elements to achieve functionality which is already included in the technology assumptions of the TELRIC network.

DISCUSSION

I. The Oppositions to McLeodUSA's Petition are Based on Misstatements of McLeodUSA's Position.

The Oppositions to McLeodUSA's Petition filed by certain RBOCs and by GTE are based on misstatements of McLeodUSA's position. Whether deliberate or inadvertant, these misstatements render those arguments either incorrect or irrelevant.

A. McLeodUSA's Position Does Not Depend on Whether IDLC is an Appropriate Forward-Looking Technology.

SBC states that McLeodUSA "suggests" that digital loop carrier (DLC) is "an outdated technology"[2], and U S WEST characterizes the position that "IDLC loops are an antiquated technology that would not be included in an ideally efficient network" as

[2] SBC's Consolidated Opposition to Petitions for Reconsideration and Clarification (SBC Opposition), at 29.

"McLeodUSA's chief argument."[3] Neither premise is correct. In fact, whether or not DLC in general, or IDLC in particular, should or should not be included in a forward-looking TELRIC cost analysis is irrelevant to the argument that McLeod is making. The point of McLeodUSA's argument is that, if the forward-looking technology used as the basis for the TELRIC cost study by a state regulatory commission includes technology (whether DLC or otherwise) which provides for the provisioning of unbundled loops, to levy an additional charge to actually unbundle the loop is unreasonable.

This can best be seen in an actual example from the state of Illinois. In Illinois, the TELRIC cost studies submitted by Ameritech and used by the Illinois Commerce Commission to set rates for unbundled loops included only "universal" digital loop carrier (UDLC) systems. These systems automatically allow for provisioning unbundled loops through the addition of cards at the central office terminal. No IDLC systems were included in the TELRIC cost study. Thus, purchasers of unbundled loops, including McLeodUSA, are already paying for the costs of UDLC systems which can readily supply unbundled loops.[4]

Despite the fact that the unbundled loop rates already include these costs, it was Ameritech's position that, since its existing network actually did include IDLC systems, CLECs must pay additional amounts to cover the cost of installing UDLC systems to replace the IDLC, if they wished unbundled loops to be provided. Although the Illinois Commerce Commission clearly saw the unreasonableness of Ameritech's position and prohibited this additional charge, the argument by McLeodUSA does not depend on

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[3] Response of US WEST, Inc. to Petitions for Reconsideration and Clarification (US WEST Opposition), at 17.

whether a particular type of technology is determined to be appropriate. Rather, it depends on the fact that, regardless of the technology used, the network costs covered by the TELRIC UNE prices already include exactly the functionality requested by CLECs: the ability to gain access to unbundled loops. Charging again for this same functionality is clear double-recovery.

In fact, McLeodUSA does not dispute that, in certain circumstances IDLC may be the most efficient technology (although RBOCs have typically not recognized the most efficient means to unbundle that technology). McLeodUSA's argument, however, does not require the Commission to tell state commission what technology assumptions to include in their TELRIC cost studies. Instead, McLeodUSA simply asks that the Commision clarify that, whatever functionality is included in the technology assumptions underlying TELRIC loop rates set by state commissions be available to CLECs when unbundled loops are purchased, without additional charge.

B. McLeodUSA's Position Is Consistent With Prior Commission Orders.

US WEST and Bell Atlantic argue[5] that McLeodUSA is essentially challenging the provisions of the First Report and Order.[6] Although this issue was addressed at length in McLeodUSA's Petition[7], the response bears repeating here. In the *Local Competition Order*, the Commission stated that ILECs were entitled to recover from

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[4] This should not be taken as agreement with the proposition that IDLC-provided loops cannot be readily unbundled.

[5] US WEST Opposition at 18; Bell Atlantic Opposition at 12.

[6] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, (1996) ("*Local Competition Order*")

[7] McLeodUSA Petition for Reconsideration at 7-9.

purchasers the costs of unbundling IDLC-provided loops.[8] That order did not state that ILECs were entitled to levy up-front charges of thousands of dollars to accomplish this. The essence of McLeodUSA's argument is that CLEC purchasers of unbundled loops are already paying for these unbundling costs, as long as the TELRIC network assumptions used by a state embody a technology which allows for unbundling. To levy additional charges requires those CLEC purchasers to pay a second time for the same functionality already included in the TELRIC loop rate. Thus, the issue is not whether the purchaser will bear the costs (which is required by the *Local Competition Order*); the issue is whether the purchaser will be required to bear the costs more than once.

In fact, it is the position advocated in the oppositions which is at odds with the *Local Competition Order*. Although both SBC and US WEST attempt to make the argument that the cost to unbundle IDLC-provided loops are actually "forward-looking"[9], the facts are clear from their filings: the goal of such charges is to recover the costs of making the existing network consistent with the technological assumptions embodied in the TELRIC study (that is, to recover the costs of actually deploying the equipment which is assumed as the basis for the TELRIC loop rates). To argue that these costs are the same "forward-looking" economic costs as are used to set TELRIC prices, as discussed in the *Local Competition Order,* is little more than sophistry. The underlying assumption of the SBC and US WEST arguments in this regard is that those companies are not adquately compensated by the TELRIC loop rate, and that they are entitled to some additional amount as reimbursement for installing equipment to turn their existing

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8 *Local Competition Order*, Para. 382, 384.

9 SBC Opposition at 29; US WEST Opposition at 17-18.

networks into the "TELRIC network". In fact, the goal of SBC and US WEST seems to be precisely what the Commission was seeking to prevent when it held that:

> We are not persuaded by incumbent LEC arguments that prices for interconnection and unbundled network elements must or should include any difference between the embedded costs they have incurred to provide those elements and their current economic costs. Neither a methodology that establishes the prices for interconnection and access to network elements directly on the costs reflected in the regulated books of account, nor a price based on forward looking costs plus an additional amount reflecting embedded costs, would be consistent with the approach we are adopting.

Local Competition Order, Para. 705. Thus, it is abundantly clear that the framework established by the Commission is founded upon the simple premise that prices for UNEs are to be based on forward-looking costs determined based on the most efficient forward-looking technology and existing wire center locations; and that these TELRIC prices are to be full compensation to RBOCs for supplying the network elements in question.

II. Requiring Compensation in Addition to the TELRIC Price for Unbundled Loops Provides RBOCs With the Means to Subvert the Requirements of the Commission's *Local Competition Order.*

In its *Local Competition Order*, the Commission considered and rejected arguments that loops served through IDLC should not be available on an unbundled basis.[10] The Commission held that unbundling such loops was technically feasible and that exempting such loops from unbundling would serve to encourage incumbents to "hide" customers from competitors by installing IDLC systems.[11] This same reasoning must be applied to the attempt to levy special construction charges in addition to the TELRIC loop rates when these loops are unbundled. Holding otherwise will allow RBOCs to circumvent the Commission's concern by installing IDLC systems and then

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10 *Local Competition Order*, Para. 383.

11 *Id.*

"hiding" the customers from competitors through the imposition of exorbitant special construction charges.

As noted in its Petition, this is a problem which McLeodUSA expects to become more serious in the future, and therefore the incentives to RBOCs will become stronger to act in a way which deters rather than advances local competition. It surely could not have been the Commission's intent to require that IDLC-served loops be unbundled, but to then allow incumbents to effectively deny the use of these loops by imposing special construction charges.

CONCLUSION

The clarifications requested by McLeodUSA in this case are straightforward. First, the Commission should note that it has always been its intent that, when an RBOC provides unbundled loops pursuant to Section 251, the functionality available to the purchaser be the same as the functionality included in the forward-looking technology embodied in the TELRIC cost study used to set the unbundled loop rate. Thus, if a TELRIC cost study includes (as it should) loop technology which allows loops to be readily unbundled, the unbundled loop rate paid by a purchaser already reflects the cost of a network which contains this technology, and no additional charges are appropriate. Second, the Commission should add language accomplishing this goal to the rules which define the unbundled loop itself. To accomplish this, McLeodUSA suggests adding the following language to the introductory paragraph of 47 C.F.R. 51.319(a), just preceding 47 C.F.R. 51.319(a)(1):

> Unbundled loops and subloops must include, without additional charge, all functionality and abilities inherent in the forward-looking technology used as the basis for the TELRIC price for the loop or subloop.

By clarifying this requirement in its rules, the Commission can avoid a major obstacle which will otherwise slow the development of local competition.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply to Oppositions of McLeodUSA Telecommunications Services, Inc. in CC Docket No. 96-98 was sent by United States First-Class Mail, postage prepaid, or hand delivered, on this 3rd day of April, 2000 to the parties on the attached list.

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